SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 111

DANIEL CASTANEDA GONZALES, PETITIONER,

VS.

H. R. LANDON, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION OF DISTRICT No. 16, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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1-2 In United States District Court for the Southern District of California, Central Division

No. 14817-BH

DANIEL CASTANEDA GONZALES, PLAINTIFF,

vs.

H. R. LANDON, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION OF DISTRICT NO. 16, JOHN P. MCGRANERY, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANTS

COMPLAINT—Filed December 8, 1952

Comes now the plaintiff and for a cause of action alleges:

I

That this complaint is filed and this action will be prosecuted pursuant to the provisions of Section 503 of the Nationality Act of 1940 (Section 903 of the United States Code).

II

That this plaintiff now is and since the filing of this complaint has been a resident of the State of California, residing within the Southern District thereof.

III

That the plaintiff was born at Santa Rita in the State of New Mexico, United States of America on the 21st day of July, 1924, and thereby acquired citizenship of the United States of
3 America.

IV

That the defendants John P. McGranery as Attorney General of the United States and the head of the Department of Justice and H. R. Landon, as District Director of the Immigration and Naturalization of District No. 16 have denied to the plaintiff his rights as a Citizen of the United States and have unlawfully imprisoned, detained, confined and restrained him of his liberty and have taken him into custody for the purpose of deportation.

V

That unless restrained by this Honorable Court said defendants will deport the plaintiff to Mexico, a country of which plaintiff has never been a citizen or national.

Wherefore plaintiff respectfully prays that this Honorable Court make an order commanding the defendants and each of them to appear at a time and place to be specified by this Court to show cause why said plaintiff should not be restored to his liberty, and pending the hearing of said Order to Show Cause plaintiff respectfully prays that said defendants be enjoined and restrained from deporting this plaintiff, and for such other and further relief as to this Court may seem meet and just in the premises.

/S/ HARRY WOLPIN,
Attorney for Plaintiff.

4 [File endorsement omitted.]

Duly sworn to by Daniel Castaneda Gonzales jurat omitted in printing.

5 In United States District Court

ANSWER TO PLAINTIFF'S COMPLAINT—Filed February 6, 1953

Comes now the defendants above named, through their attorneys, Walter S. Binns, United States Attorney for the Southern District of California, Clyde C. Downing and Robert K. Grean, Assistants United States Attorney for the Southern District of California, and in answer to plaintiff's complaint herein admit, deny and allege as follows:

I

Defendants neither admit nor deny the allegations contained in Paragraph I of plaintiff's complaint, on the ground that said allegations are conclusions of law.

II

Defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs II and III of plaintiff's complaint, and on that ground deny each and every allegation therein contained. Defendants further deny that the plaintiff is a citizen of the United States of America.

III

Answering Paragraph IV of plaintiff's complaint, plaintiff alleges that since the filing of plaintiff's complaint defendant James P. McGranery, sued herein as John P. McGranery, has been superseded by Herbert Brownell, Attorney General of the United States, who has heretofore and prior to the filing of this action been substituted as party defendant.

6 Defendants allege that H. R. Landon, as District Director of Immigration and Naturalization Service, is not a proper party defendant in that he is not the head of the Depart-

ment of Justice, but is an employee thereof and is not a proper party under Section 903 of Title 8, United States Code.

Further answering Paragraph IV of plaintiff's complaint, defendants deny that they have unlawfully imprisoned and restrained the plaintiff of his liberty and deny that they have denied to the plaintiff his rights as a citizen of the United States. In connection therewith defendants allege that the plaintiff has been lawfully taken into custody for deportation as an alien.

IV

Answering Paragraph V of plaintiff's complaint, defendants admit their intention to deport the plaintiff to Mexico, but allege that such action will be held in abeyance pending a hearing in the within action.

For a further, separate second and affirmative defense, defendants allege:

I

That the plaintiff remained outside of the jurisdiction of the United States in time of war, to wit: from September 27, 1944 until April 23, 1946, for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

7 For a further, separate and third defense, defendants allege:

I

That the plaintiff's complaint has failed to state a claim upon which relief can be granted.

Wherefore, defendants pray for a judgment dismissing said complaint, denying the relief prayed for therein, and for such other relief as to the Court seems just and proper in the premises.

WALTER S. BINNS,
United States Attorney.
CLYDE C. DOWNING,
Assistant U. S. Attorney
Chief, Civil Division.
/S/ ROBERT K. GREAN,
Assistant U. S. Attorney,
Attorneys for Defendant.

(Affidavit of Service by Mail)
[Filed endorsement omitted.]

8 In United States District Court

STIPULATION RE SUBSTITUTION—Filed February 6, 1953

It is hereby stipulated by and between the respective parties hereto through their attorneys that pursuant to Rule 25(d) of the

Federal Rules of Civil Procedure that Herbert Brownell, Esq., as Attorney General of the United Sattes may be substituted as party defendant in the place and stead of James P. McGranery, sued herein as John P. McGranery.

Dated at Los Angeles, Calif. this 29th day of January, 1953.

/S/ HARRY WOLPIN,
Attorney for the Plaintiff.

WALTER S. BINNS,
CLYDE C. DOWNING AND
ROBERT K. GREAN,
By /S/ ROBERT K. GREAN,
Attorneys for Defendants.

It is so ordered this 6th day of Febr. 1953.

/S/ LEON R. YANKWICH,
Judge of the U. S. District Court.

9 In United States District Court

MINUTES OF THE COURT—Feb. 26, 1953

Los Angeles, Calif.

Present: The Hon. BEN HARRISON, *District Judge.*
Deputy Clerk: M. E. WIRE. Reporter: J. D. AMBROSE.
Counsel for Plaintiff: HARRY WOLPIN.
Counsel for Defendants: ROBERT K. GREAN, Ass't U.S. Att'y.
STANTON T. CHANDLER, Spanish Interpreter. (Withdrawn.)
ARMIDA BAY, Spanish Interpreter. (11:09) AM.

PROCEEDINGS: For trial. At 10 AM Court convenes herein. Both sides answer ready.

DANIEL CASTANEDA GONZALEZ, plaintiff, is called and sworn.

Counsel stipulate to certain facts.

Stanton T. Chandler is sworn and acts as Spanish Interpreter.

Daniel Castaneda Gonzales testifies in his own behalf through said Spanish Interpreter.

Counsel and the Court not being satisfied with said interpreter, he is withdrawn.

At 10:17 A.M. court recesses. At 11:09 AM court reconvenes herein and all being present as before, including plaintiff and counsel for both sides, Court orders trial proceed.

Armida Bay is sworn and acts as Spanish Interpreter.

10 Daniel Castaneda Gonzales, heretofore sworn, resumes the stand and testifies further through said Spanish Interpreter, Armida Bay.

Counsel for the parties hereto stipulates as to the transcripts of the hearings before the Immigration Officers.

At 11:55 AM court recesses to 2 PM. At 2:03 PM court reconvenes herein, and all being present as before, including plaintiff and counsel for both sides, Court orders trial proceed.

Daniel Castaneda Gonzales, heretofore sworn, resumes the stand and testifies further through Armida Bay, Spanish Interpreter.

Pursuant to stipulation of counsel for the parties, Defts' Ex. A is admitted in evidence and so marked. (See file, Case No. 14,669-T Civil, in this Court.)

Both sides rest.

At 2:23 PM Attorney Grean argues to the Court on behalf of defendants.

At 2:38 PM Attorney Wolpin argues to the Court on behalf of plaintiff.

At 2:37 PM the Court makes a statement of its decision, and Court finds in favor of defendants.

Counsel for the parties hereto orally waive findings of fact and conclusions of law. Counsel for defendants is directed to prepare, serve, and present form of judgment for signature.

11 In United States District Court

No. 14817-BH Civil

DANIEL CASTANEDA-GONZALES, PLAINTIFF,

v.

H. R. LANDON, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION OF DISTRICT NO. 16, HERBERT BROWNELL, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANTS,

JUDGMENT—entered March 10, 1953

The above entitled matter came on regularly for trial on February 26, 1953, in the above entitled Court, before the Honorable Ben Harrison, Judge presiding, the plaintiff being present in Court and being represented by his attorney, Harry Wolpin, and the defendants by their attorneys, Walter S. Binns, United States Attorney, Clyde C. Downing and Robert K. Grean, Assistants United States Attorney, appearing by Robert K. Grean; and the Court having heard the testimony of the plaintiff spoken in open Court, and the Court having received evidence on behalf of the defendants by stipulation of counsel for the parties hereto, and the Court having considered the pleadings and having heard oral argument of counsel, and being fully advised in the premises; and findings of fact and conclusions of law having been waived by plaintiff, and the Court having ordered judgment for the defendants;

12 Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That the plaintiff, Daniel Castaneda-Gonzales, is not a citizen of the United States, having expatriated himself under Section 401(j) of the Nationality Act of 1940, as amended, (8

U.S.C.A., 801(j)), by voluntarily remaining outside the jurisdiction of the United States from September 1944 until April 23, 1946, for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

2. That defendants have judgment, dismissing plaintiff's complaint with prejudice.

3. That the defendants have judgment for costs. Costs taxed at $20.00.

Dated this 4*th* day of March, 1953.

(S.) BEN HARRISON,
United States District Judge.

Approved as to form pursuant to Local Rule 7(a), this——— day of March, 1953.

HARRY WOLPIN,
Attorney for Plaintiff.

Received copy of the within Judgment this 9th day of March, 1953.

HARRY WOLPIN,
Attorney for Plaintiff.

Endorsed: Filed Mar. 9, 1953; EDMUND L. SMITH, *Clerk.*

Endorsed: Judgment Docketed and Entered Mar. 10, 1953.

EDMUND L. SMITH, *Clerk* by (S.) C. A. SIMMONS, *Deputy Clerk.*

13 In United States District Court

NOTICE OF APPEAL—Filed April 24, 1953

To the Respondents Above Named and to Walter S. Binns, United States Attorney and Clyde C. Downing and Robert K. Greau, Assistants United States Attorney, Federal Building, Los Angeles, California, Their Attorney:

Please Take Notice that the above named plaintiff hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment of the above entitled Court entered on the 10th day of March, 1953, and to the whole thereof.

Dated this 24th day of April, 1953.

(S.) DAVID C. MARCUS,
Attorney for Plaintiff.

(Affidavit of Service by Mail)

(File endorsement omitted.)

14 Designation of Record on Appeal (omitted in printing).

15 Counter-Designation of Record on Appeal—(omitted in printing).

16-18 Orders Extending Time to File Record and Docket Appeal (omitted in printing).

19 Clerk's Certificate to foregoing transcript omitted in printing.

20 In United States District Court

Honorable BEN HARRISON, *Judge Presiding*

[Title omitted]

No. 14817-BH-Civil

REPORTER'S TRANSCRIPT OF PROCEEDINGS—Filed July 17, 1953

APPEARANCES:

For the Plaintiff: HARRY WOLPIN, Esq.
For the Defendants: WALTER S. BINNS, *United States Attorney.*
By ROBERT K. GREAN,
Ass't U.S. Attorney.

21 The COURT: You may proceed.

The CLERK: Daniel Castaneda Gonzales vs. H. R. Landon and others.

Mr. WOLPIN: The plaintiff is ready.

Mr. GREAN: The defendant is ready.

The COURT: You may proceed.

Mr. WOLPIN: Mr. Castaneda Gonzales, will you take the stand, please?

DANIEL CASTANEDA GONZALES, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The CLERK: State your full name.

The WITNESS: Daniel Castaneda Gonzales.

DIRECT EXAMINATION

By Mr. WOLPIN:

Q. May I have your birth certificate?

A. Yes, sir.

The COURT: Is there any dispute but what this man was born, as alleged in the complaint in the United States, Mr. Grean?

Mr. GREAN: No, there is no dispute. We will stipulate that there has been a finding by the Board that he was born in the United States.

22 Mr. WOLPIN: I discussed a stipulation with Mr. Grean and I think we can stipulate to these facts which will considerably shorten the trial, your Honor: That the plaintiff was born in New Mexico on July 21st, 1924; that he was less than two years of age when he was taken by his parents to reside in the Republic of

Mexico. He resided there from that time until April 23rd, 1946 at which time he came to the United States. He registered. He came to the United States and upon an exhibition of his birth certificate was admitted to the United States;

That he was in the United States until sometime in 1947 when he returned to Mexico and the next time he tried to enter the United States at El Paso he was excluded because the Board of Special Inquiry felt that he had lost his citizenship under Section 401-J of the Nationality Act.

The COURT: What was the date he first came in?

Mr. WOLPIN: April 23rd, 1946.

The COURT: And then the second time?

Mr. WOLPIN: The second time was in 1947, I believe. I can get your Honor the date.

The COURT: That is close enough?

Mr. WOLPIN: Is that your stipulation?

Mr. GREAN: Yes, so stipulated.

Q. By Mr. WOLPIN: Mr. Gonzales, you lived in Mexico from 1926 until 1946, is that correct?

23 A. Well, I don't know exactly but I live in the United States until I was about two years old, from 1946——

Q. 1926 to 1946 where did you live?

A. Favela.

Q. Where in Favela?

A. Favela is in the State of Chihuahua.

Q. How far would that be from the American border if you know?

A. About 350 miles or 400.

The COURT:How far from Los Angeles?

The WITNESS: From El Paso, Texas.

Mr. WOLPIN: El Paso is the closest border point.

The COURT: How far from El Paso?

The WITNESS: 350 or 400 miles.

Q. By Mr. WOLPIN: Now, Mr. Gonzales, when did you first—let me ask you this, is your father alive—is your father living?

A. No, sir.

Q. When did your father die?

A. 1935.

Q. You were how old in 1935?

The COURT: That shows for itself, counsel.

Q. By Mr. WOLPIN: When did you first learn that you were an American citizen, Mr. Gonzales?

A. Well, I was about 12 years old when my mother told

24 men that I was born in this country, but I don't know exactly what I have to do at the time, but I find out in 1946 what I have to do.

Q. What did you find out you had to do in 1946?
A. Pardon me?
Q. What did you find out you had to do in 1946?
A. I don't understand very well what that means.
Q. You said you found out what you had to do in 1946.
A. Well, I find when I come to the United States.
Q. Did you ever have a desire to come to the United States before 1946?
A. Well, I don't understand very well but when I first come to the United States——

The COURT: Why didn't you come before?
The WITNESS: Why?
The COURT: Yes.
The WITNESS: Because my mother don't let me.
The COURT: Your wife don't let you?
The WITNESS: My mother.

Q. By Mr. WOLPIN: Will you tell us what happened before you came to the United States in April of 1946?
A. What happened before?
Q. Yes.
A. Well, before—the only thing I do—I come to the American Consul and ask for a card. He gave it to me and——

25 The COURT: I can't understand him. Where is there an interpreter?

Mr. GREAN: I was going to suggest one. I thought from counsel's assurance that the man would be able to understand and answer correctly and consequently we could proceed without an interpreter, but it appears we are going to have to have one for the benefit of the court and the witness—so that we may have a clear picture of what is being asked and answered.

The COURT: I think in fairness to this witness we should have an interpreter.

Mr. WOLPIN: Mr. Chandler of the Immigration and Naturalization Service is present in court and I have had a talk with him and my client and may we use his services in translating?

The COURT: Is he going to be a witness in the case?

Mr. GREAN: No. Mr. Chandler will not be used by the Government as a witness. My only thought or reservation to his use is his ability to speak the language. If the court would like to proceed with Mr. Chandler's aid we will be glad to.

The COURT: I can't test him out as to the extent of his vocabulary.

Mr. GREAN: That is the thing, whether Mr. Chandler's vocabulary is sufficient for him to be able to get along with the witness.

The COURT: Are you satisfied?

26 Mr. WOLPIN: I am satisfied Mr. Chandler is able to get along.

The COURT: He will be sworn as an interpreter, then. You do not feel he is disqualified because he is connected with the Immigration Service?

Mr. WOLPIN: No, I don't feel he is disqualified, your Honor.

(STANTON T. CHANDLER is sworn as an interpreter to translate Spanish into English and English into Spanish.)

The COURT: You may proceed.

Mr. WOLPIN: Does your Honor wish to go back?

The COURT: The last question. I didn't understand his answer.

Q. By Mr. WOLPIN: Mr. Gonzales, will you tell the court what led up to your coming to the United States on April 23rd, 1946?

A. Well, I come to the American Consul.

The COURT: Why did you go to the American Consul?

The WITNESS: Because when I tried to come to the United States those people, they know something better than I and they told me that I have to go to the American Consul and come to the immigration station on the border in El Paso.

The COURT: You had lived down there below the Texas border—below El Paso for a long time?

The WITNESS: Yes.

27 The COURT: Had you grown up down there?

The WITNESS: Yes, sir, I grow up over there, yes.

The COURT: And then why did you want to come back to the United States? Why didn't you stay there?

The WITNESS: Oh, well, because I have to look for the future. Let me tell you. When I grow up there the government places—they told me if I have to do something I have to quit of my citizenship from the United States. I tell her I better come back to the United States than do that.

The COURT: Did you work in Mexico?

The WITNESS: No, sir, I never worked with anybody but my mother. They—then everybody citizen of Mexico—they give the board——

The COURT: This is very unsatisfactory, counsel.

Mr. GREAN: It is not going to work if the interpreter is going to ask questions other than those asked by counsel.

Mr. WOLPIN: Will your Honor instruct the witness to answer the questions in Spanish. He is asked the questions in Spanish and he answers in English. Will you answer the questions, Mr. Castaneda, in Spanish?

By Mr. WOLPIN:

Q. What events led up to your coming to the United States on

pril 23rd, 1946? Did something happen at home, or wherever you ere, 350 or 400 miles from the border that made you come to the nited States?

A. When I became 21 years of age I decided at that time that I should establish my rights as an American to come here to this country as a citizen.

Q. That is correct?

A. Because the small accommodation with my mother wasn't nough room for me.

Mr. GREAN: If the court please, it is very unsatisfactory—this is very unsatisfactory way of proceeding and it is going to be almost impossible to cross examine this witness.

The COURT: Is there an interpreter available?

Mr. GREAN: I would suggest that counsel arrange immediately or an interpreter to be present. If he checks with the clerk of the ourt or would permit someone to call an interpreter through the ffice of the clerk she can probably be here in a very short time.

Mr. WOLPIN: Let me ask you this. Will the Government pay the nterpreter?

The COURT: No.

Mr. GREAN: Of course not.

Mr. WOLPIN: Let me talk to my client.

The COURT: Can't you get an interpreter? The court wants to lispose of this case.

Mr. GREAN: I will help counsel to arrange for an interpreter.

The COURT: Can't you get an interpreter from the Immigration Department who will come down here for an hour or so?

Mr. GREAN: I am informed that they themselves utilize outside interpreters; that they do have interpreters at San Ysidro and various other ports but not here in the central office.

Mr. WOLPIN: My client informs me that he has the funds with vhich to pay for an interpreter so will you arrange for one and may ve have a short recess?

Mr. GREAN: I will arrange that immediataely.

The COURT: Mr. Clerk, can we get one from the county list?

Mr. GREAN: We have a list and Miss Armeda Bey has been found o be satisfactory.

The COURT: Will you find her across the street?

Mr. GREAN: Probably across the street or in the office here in the downtown area. We can check that and have a report back immediately.

The COURT: We will take a recess. There is no use of proceeding this way.

(Short recess.)

The COURT: You may proceed.

(ARMEDA BEY was sworn as interpreter to translate the English language into Spanish and the Spanish language into English.)

The COURT: Will you state your name?

The INTERPRETER: Armeda Bey.

30 The COURT: I wish you would ask this witness to answer in Spanish.

Mr. WOLPIN: I just instructed him to do that, your Honor.

The COURT: So there will not be any confusion.

Mr. WOLPIN: That is just what I told him.

By Mr. WOLPIN:

Q. Mr. Castaneda, did you register for the draft?

A. Where?

Q. In the United States? Did you register for the American Army?

Mr. GREAN: May I admonish counsel, because he understands Spanish, not to interrupt the witness when he is answering. Let the reporter get his answer.

By Mr. WOLPIN:

Q. Where did you register?

A. First time they register for the military service for the United States was in the office of the American Consul in 1946.

Q. Did you receive a classification from the draft board?

A. Yes, I got it here.

Q. How were you registered with the draft board? What was your classification?

A. I-A.

Q. Did you receive a call, a preinduction call to be ex-

31 amined physically?

A. Yes, I did, but when I registered—when I went to Pasadena they told me to wait because they had a new order and then I received a copy from a local board from El Paso that it was not necessary for me to report to the local board until they called me again, but then I didn't receive any other notice.

Q. Did you work for anyone in Mexico?

A. Worked for my mother about 10 years.

Q. Did you have any brothers or sisters?

A. Five, three boys and two girls.

Q. Were they older or younger than you?

A. Younger.

Q. During the time that you were in Mexico prior to April 23rd, 1946, did you help to support your mother and these five brothers and sisters of yours?

A. Yes.

Mr. WOLPIN: You may cross examine, counsel.

The COURT: I have some questions to ask. What kind of work did you do?

The WITNESS: Agricultural.

The COURT: Where did you go to school?

The WITNESS: Right there on the ranch from six years to 10 years. I attended school when I was 10 years old—until I was 10 years old and then my father died and I had to quit school
32 to support my family and no one had to tell me my obligation to any country.

The COURT: What kind of ranch work did you do?

The WITNESS: It wasn't exactly a ranch. It was a ranch in a sort of way. There were several citizens there. They were living there and paying rent to the government and I was helping my mother—working for my mother.

The COURT: What kind of work were you doing?

The WITNESS: Agricultural work, planting and picking corn.

The COURT: Was it cotton or what?

The WITNESS: Corn and beans.

The COURT: How close were you to a town?

The WITNESS: It was a little town there, about 20 kilometers.

The COURT: What newspapers did you read?

The WITNESS: I never read a newspaper until I come to the United States.

The COURT: When did you first know war was on?

The WITNESS: When some of the workers were here working and would go back over there.

The COURT: When did you know the United States was engaged in a war?

The WITNESS: 1946.

The COURT: What?

33 The WITNESS: 1946.

The COURT: That is all.

CROSS EXAMINATION.

By Mr. GREAN:

Q. You stated that you first knew the war was on in 1946. Didn't you know that the war was on before that?

A. No, I did not know it.

Q. I call your attention to a hearing given you before the Immigration and Naturalization Service at El Paso, Texas on October 2nd, 1947.

A. Yes, I remember.

Q. And do you remember that you were asked questions and you gave answers at that time?

A. Yes, I remember.

Q. —call your attention to a question, and I will call your attention to an answer and then I will ask if that question was asked of you and if that was your answer.

"Q. How long have you known that the United States is at war?
"A. Since about 1942."

A. No.
Q. Was that question asked of you and was that your answer?
A. My answer was that I knew that the war—that I knew about the war in 1946 and I also answered that I wanted to come
34 to the United States before but my mother did not permit me to leave the house.
Q. And when did you first desire to come to the United States?
A. When I was——

The COURT: That doesn't answer the question. Did you tell them at that hearing down there that you knew the war was on in 1942?
The WITNESS: I did not tell them.
The COURT: What?
The WITNESS: I did not tell them. I told them in 1946 and they told me it was in 1944. They scared me.
The COURT: What was that last answer?
The WITNESS: I committed an error. I went to say '46 and said '44 and I corrected myself at that time.
Mr. GREAN: What about 1942? Did you say that you knew that the war was on from 1942?

A. No, I didn't say that.

By Mr. GREAN:

Q. And when did you know that it was your duty as an American citizen to register for military duty with the United States?
A. In 1946.

Q. I call your attention to the hearing of October 2nd, 1947 and I will read the question and your answer and I will ask you if that was asked of you and that was your answer.

35 "Q. How long have you known that it was your duty as an American citizen to register for military duty with this country?
"A. Since 1944."

Was that question asked of you and was that your answer?
A. The answer I gave was 1946 but they based the same answer that I gave before.

Q. All right. I will read the next question and your answer:

"Q. Just what did you learn in 1944 about your obligation to this country?

"A. I talked to some individuals who were citizens of the United States living in Mexico and they told me that American citizens living abroad should return to the United States to register for military service."

I will make this easier for the interpreter by handing her another copy of the transcript.

The WITNESS: I didn't give that answer.

By Mr. GREAN:

Q. The next question was:

"Did these people also tell you that a United States citizen could register for military duty at the American Consulate?

"A. Yes."

Was that question asked and was that your answer?

A. When I lived—during the time that I lived in Mexico,
36 since my father died in 1935, I didn't know an American citizen that lived in Mexico.

Q. Your answer is that that question was not asked of you and that it was not your answer, is that correct?

A. I don't remember them having asked me that question.

Q. The next question was then:

"Why did you not register at the American Consulate in Chihuahua, Mexico near your home?

"A. Well, I will tell you again I did not want to register."

A. I did not answer that. They wrote that in there.

Q. All right, the next question was:

"Why didn't you want to register for military service with this country in 1944 and 1945 and 1946 prior to April 23rd of that year?

"A. Because I was afraid to register."

Was that question asked of you and was that your answer?

A. That is not my answer.

Q. The next question was:

"Why were you afraid?

"A. I was afraid of military service during the war."

Was that question asked you and was that your answer?

A. I didn't say I was afraid. I have never been in a war. I wouldn't know what a war is.

37 Q. Did you register for military service in Mexico?

A. Yes.

Q. And when was that?

A. In 1942.

Q. And did you know at that time that the United States was at war?

A. No one told me that it was.

Q. But you knew Mexico was at war at that time?

A. I didn't know anything. .

Q. But you registered for military service in Mexico?

A. Yes, I did just as any compatriot would do the same thing here. They would have to register. I register there and waiting to be—to become of age so then I could register here.

Q. Did you know that if you became of age you would then register in the United States?

A. There is a little confusion—something I want to get straight here. I also want to say that my mother wouldn't permit me to go out of the house. Didn't want me to go out of the house. Wanted me to remain at home all the time.

The COURT: You say you registered for military service in Mexico in 1942?

The WITNESS: Yes.

The COURT: Why didn't your mother want you to come to the United States?

38 The WITNESS: I don't know the reason. She might have been afraid that I would never come back there any more.

The COURT: Didn't she tell you if you came to the United States you would have to register for the war?

The WITNESS: No, she didn't tell me anything.

The COURT: Did you ever discuss that with her?

The WITNESS: I discussed that with her when I was 21 years old in order to get out of the house.

By Mr. GREAN:

Q. When did you first—I beg your pardon, your Honor. Did you have another question?

The COURT: Go ahead.

By Mr. GREAN:

Q. When did you first desire to come to the United States?

A. The first time that I decided to come to the United States

was in 1937 because the National schools here—I wanted to get a mechanical course—a course in mechanics.

Q. You first desired to return to the United States in 1937?

A. No, I did not decide. I had intentions of.

Q. Let me call your attention again into the hearing of 1947 and I will read this question and your answer:

"Q. The primary inspector states that you admitted to him today that you had the intention of returning to the United States since 1942. What do you have to say to that?"

39 and your answer was:

"Yes, that is correct."

Was that question asked and was that your answer?

A. My intention has always been to come back to the United States when I was quite young but my mother wouldn't let me.

The COURT: Was that your answer to the question of the Board?

The WITNESS: The answer is just the one I said from the beginning.

The COURT: May I ask——

By Mr. GREAN:

Q. Was that question asked of you and was that your answer?

A. This question that they kept asking me, they were basing their answer on the fact that they thought I was afraid and I was trying to say I wasn't afraid.

Q. Let me ask you this question then.

The COURT: I would like to ask counsel a question.

Mr. GREAN: Yes.

The COURT: Is there going to be evidence that these statements were made at that time?

Mr. GREAN: Yes, your Honor.

The COURT: Is there evidence or a stipulation to that effect?

Mr. GREAN: We have a stipulation to the effect that if

40 the officer of the Immigration Service were present he would testify that these questions were asked and the answer made and that this is a true transcript of the hearing.

The COURT: Is that correct, counsel?

Mr. WOLPIN: That is our stipulation, your Honor.

Mr. GREAN: Let me ask you this question.

"Q. Had it not been for your obligation to register in the United States for military service would you have come to this country during the years 1942, 1943, 1944 or 1945?

"A. I wanted to come to the United States in 1942 but my mother would not permit me to do so. I would have come to

the United States in 1944 or 1945 had it not been for the requirement to register."

Q. Was that question asked of you and was that your answer?
A. No, I did not answer like that.

"Q. Why were you willing to return to the United States on April 23rd, 1946?
"A. I came to the United States to work, to better my life."

Was that your answer to that question?

The COURT: Ask him to answer that yes or no.
Mr. GREAN: Let us get that yes or no answer clear and then you will have an opportunity to explain.

The WITNESS: I didn't understand that.

41 By Mr. GREAN:

"Q. Why were you willing to return to the United States on April 23rd 1946?
"A. I came to the United States to work, to better my life."
Was that your answer to that question?
A. (No answer)
Q. "Why were you willing to return to the United States on April 23rd, 1946?"
"A. I came to the United States to work, to better my life."
Now was that question asked of you and was that your answer.
A. No, it isn't exactly.

The COURT: What was the answer?

(Answer read)

By Mr. GREAN:

Q. The next question asked of you was "why did you not come to the United States in 1944 or 1945 to work and better your life", and your answer was:
"On account of the war."
Was that question asked and was that your answer?
A. That is the question they asked me. The answer was that because my mother didn't let me and not because I was afraid of the war.
Q. Now, I call your attention to a hearing before the Board, which was held in El Paso, Texas in October of 1950.
42 Do you recall that?
A. Yes, I believe I do.
Q. And at that time you were asked questions and you gave answers, is that true?
A. Yes.

Q. Now, I call your attention to that hearing and ask if in that hearing they did not read to you a transcript of your hearing of 1947?

A. Yes, they did read it to me but I did not admit it. They kept on writing the same.

Q. But they read your statement of 1947, is that right?

A. Yes, but everything they read was against me and I didn't accept anything like that.

Q. All right. I will read this question and your answer and see if it was asked of you and that was your answer:

"Q. What do you have to say regarding the hearing just read and translated to you in Spanish?

"A. I was denied admission because I was afraid but now I am willing to serve in the armed forces." Was that your answer to the question?

A. I did not say that I was afraid.

Q. I will ask you this question.

"Q. Why was your mother willing for you to come to
43 the United States in 1946 but unwilling for you to come to the United States in 1943, 1944 or 1945?

"A. In 1946 my mother was not afraid that I would be taken off to war."

Was that your answer to the question?

A. (No answer)

The COURT: Did you so testify?

The WITNESS: My answer that I gave at all times was that she did not want me to leave the house at any time.

By Mr. GREAN:

Q. And was the statement that you made in 1946:

"My mother was not afraid that I would be taken off to war," was that your answer?

A. She did not mention war to me.

Q. Now, Mr. Castaneda, did you ever state to the Board at the hearing of 1947 or in 1950, did you state or did you admit that you remained outside of the United States from 1944 to 1946 to avoid and evade military service in the armed forces of the United States?

A. No.

Q. Well, calling your attention back to the hearing of 1947 to this question:

"Q. Do you admit that you remained outside of the
44 jurisdiction of the United States from September 1944 until April 23, 1946 for the purpose of evading or

avoiding training and service in the land and naval forces of the United States?

"A. Yes."

Was that question stated to you and was that your answer?

A. No.

Q. Now, I call your attention again to the hearing of October 1950——

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. WOLPIN: Mr. Grean, pardon me, I don't believe we had a stipulation in reference to that. Our stipulation you said—shall I send for the man in Texas or will you stipulate he would testify that is a transcript of the hearing?

Mr. GREAN: This hearing in 1950 was held in El Paso, Texas. The hearing of 1947 was at El Paso, Texas. If counsel wishes a continuance for such time to bring a man in from Texas I will be happy to do so at great expense to the Government.

Mr. WOLPIN: It won't be necessary.

Mr. GREAN: It was my understanding that your stipulation covered the entire record.

Mr. WOLPIN: I will stipulate it will cover the entire record.

The COURT: I was just wondering why it is necessary to go on impeaching this man. Apparently he isn't going to admit
45 that he made any statements. If he gave that testimony there he has been impeached sufficiently that I wouldn't believe anything he said here. At this stage of the game I think the impeachment is sufficient to break down his credibility as a witness.

Mr. GREAN: I have brought it up to 1950. I would like to bring it up through 1952 which this record does, as to the same admissions and the correctness of what was said.

The COURT: That doesn't prove those admissions, counsel. That doesn't prove he made those statements. All it does is impeach him.

Mr. GREAN: Yes, it does.

The COURT: It affects his testimony here. That doesn't prove those were the facts.

Mr. GREAN: No, his testimony here is what I am impeaching.

The COURT: I know, but suppose you do impeach his testimony what is the effect? You have admitted that he was born in the United States.

Mr. GREAN: Yes.

The COURT: And whose burden is it to prove he stayed out of the United States for the purpose of evading military service?

Mr. GREAN: The plaintiff has that burden. The burden is on the plaintiff to prove his right to a judgment of nationality from this court. The burden is upon the Government to respond
46 to any defense they have to make.

The COURT: The burden is established as soon as it is established he is a citizen.

Mr. GREAN: If the court desires to have these proven as admissions rather than as impeachment evidence——

The COURT: I am looking at it this way, counsel. I am not questioning the fact he made those statements. That is I don't question the Government's records and I feel that his denial of those statements breaks down his own testimony here, but haven't you a burden to prove that he has lost his citizenship.

Mr. GREAN: It is very simple to prove he has lost his citizenship by calling the Immigration and Naturalization Service to show that they have excluded him on the ground that he lost his citizenship through expatriation. That is the purpose of this suit. That is the reason why he is here.

The COURT: I realize that, but this is a de novo proceeding. This is a trial de novo. These cases have given me considerable concern.

Mr. GREAN: The case heard by Judge Byrne——

The COURT: You refer to Judge Byrne's decision but his decision didn't approach the question of evidence so must as the question of age.

47 Mr. GREAN: We had two matters before Judge Byrne.

The COURT: I didn't read the second case. The question in my mind is this. We haven't only this group of boys who came back right after the Armistice and the purpose of these cases was to penalize those who would not participate in the war effort. The purpose of this statute was, for those people who refused to accept their responsibility during the war, was that they should lose their citizenship if they went beyond the borders of the United States for the purpose of evading military service. I realize the problem. Now they are talking about a third world war and are we going to have the same problem again. It is essential that these boys who stayed out of the United States to evade military service should lose their citizenship and should be deported, but I am wondering as to the question of proof. It isn't because I am not in sympathy with this Act. I am in complete sympathy with the purpose of the Act but how about taking a man's citizenship away from him on his own admissions. Would that be evidence?

Mr. GREAN: It has been evidence in other cases I have had before this court.

The COURT: Has there been any appeals on any of them?

Mr. GREAN: How else are we going about this, if the court please?

The COURT: That is what I am wondering, counsel, to be
48 frank with you.

Mr. GREAN: Now in the Japanese cases or the cases that arise in Italy or any of the other cases, unless actual records are kept how are we able to show——

The COURT: Take the Chinese cases, for instance, the question of whether they were born here.

Mr. GREAN: That is another story, but in the Japanese cases we admit birth in the United States and then they have gone abroad and commited an expatriating act and how do we determine that? By their own admissions. Now, they come in and try to justify the commission of that act. But here we have evidence before the court by stipulation that the man left the United States at the age of two years. He didn't return until 1946.

I have an admission that he knew about the war in 1942; that he knew of his duty to register; that he didn't come back because he was afraid of the war.

The COURT: Just a moment. You have admissions. You are impeaching him on that point. You haven't an admission in a sense —strike that, Mr. Reporter. What you are reading is not evidence.

Mr. GREAN: But this can be presented as evidence, if the court please. This can be presented as evidence. Let us assume for a moment that the officers who asked these questions and got these answers were present before the Court.

49 The COURT: I think your stipulation covers that.

Mr. GREAN: And I would ask them:

"Did you question the plaintiff with regard to why he remained in the United States of Mexico?"

The COURT: How many questions do you have to ask this witness?

Mr. GREAN: I have just a few more questions, your Honor.

The COURT: Well, I think we will take a recess until 2:00 o'clock and then I will hear those few questions. I presume this is the only witness you have.

Mr. GREAN: This is our only witness and then we will listen to the argument.

The COURT: I want to say frankly I feel that as far as this man's credibility is concerned I wouldn't believe him. It is just a question as to whether I can accept that as evidence. It is a legal point that I am concerned about. Do you understand my point, counsel?

Mr. GREAN: Yes, I do, your Honor.

The COURT: I realize it is a troublesome problem as far as the Government is concerned, but at the same time I don't know whether this is sufficient or not.

Mr. GREAN: We have had cases where the admissions of the plaintiff have been recorded in the usual course of business and to which the plaintiff admits he attended and the questions were

asked and answered at that time—whether he admits these specific questions or not and upon the basis that he attended the hearing, that he was present when the questions were asked and answered, and counsel has stipulated that the transcript is correct and stipulated that if the man were present he would testify that this is a true and correct transcription of the testimony. That is sufficient for admission into evidence.

The COURT: I would like to see a case that holds that. I would like to have an authority that holds that—a Circuit Court decision.

Mr. GREAN: Well, the court is asking for something that is very difficult to find.

The COURT: I realize that but I don't think another District Judge's opinion is any better than my view of it. I have that good opinion of myself.

Mr. GREAN: I do have cases wherein the testimony of the plaintiff taken in the usual course of business before an agency of the Government and transcribed and then reaffirmed at subsequent times, as this plaintiff has done, are admissible in evidence on several grounds. First it is admissible——

The COURT: Just a moment. I can stop a lot of argument there by having you give me the cases that hold that way.

Mr. GREAN: All right, I will bring them in, if the court please.

The COURT: I would like to see one because where there is testimony taken in the regular course of business is admissible because it is a part of the Government's records.

Mr. GREAN: I have a case on that point.

The COURT: That will be fine. We won't have any argument then.

Mr. GREAN: All right.

(Whereupon at 12:00 o'clock noon a recess was had until 2:00 o'clock p.m. of the same day.)

The COURT: You may proceed.

Mr. GREAN: If the court please, I would like to ask just two or three questions of the plaintiff which will bring his admissions up to date, up to 1952, as to the correctness of the statements and then I will proceed to a discussion of the points which the court has inquired about.

Daniel Castaneda Gonzales, the plaintiff herein, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. GREAN:

Q. Now, Mr. Castaneda, we have discussed this morning the hearings which you attended before the Immigration Board in 1947 and

1950. Now, I am going to ask you if you recall attending such a hearing in January, in fact on January 9th, 1952?

A. Yes.

Q. Now, I call your attention to a question which was asked of you and your answer and ask if that was asked and if this was your answer.

The COURT: Where was this hearing?

Mr. GREAN: That was held at Los Angeles, California. I believe it was at San Pedro, if the court please.

53 The COURT: Were there two attempts to enter the country?

Mr. GREAN: Yes, there were, your Honor. In fact there were more than two. There were three. There were several exclusions.

By Mr. GREAN:

"Q. In your hearing before boards of special inquiry at El Paso, Texas, in 1947 and 1950, did you admit that you had remained in Mexico during World War II for the purpose of evading or avoiding training or service in the armed forces of the United States during time of war and you were excluded as an alien immigrant not in possession of an unexpired immigration visa and passport?

"A. Yes, sir, I did, and they did tell me that I needed to get a passport and immigration papers to enter the United States. The only thing was I did not do so but entered without."

Was that question asked of you and was that your answer?

The COURT: Tell him to answer that yes or no.

The WITNESS: There are a lot of ways I just can't answer that yes or no.

The COURT: Tell him he can make an explanation after he answers the question. As I understand, counsel, in order to avoid the necessity of bringing witnesses here both of you have stipulated that these are true and correct; that if the parties who took these hearings were present they would testify that he had made

54 the statements that these transcripts indicate.

Mr. WOLPIN: That is our stipulation.

Mr. GREAN: Yes.

The COURT: Then shouldn't the transcripts be in evidence?

Mr. WOLPIN: I have no objection to it going into evidence your Honor.

Mr. GREAN: That is my desire, if the court please, to put them into evidence.

The COURT: Tell him he can answer the question yes or no and then make any explanation he wants.

The WITNESS: That is a very long question.

The COURT: Break it up. You were excluded in El Paso, weren't you?

The WITNESS: They let me come in in 1946.

The COURT: But in 1947 they wouldn't let you come in?

The WITNESS: They held me for investigation.

The COURT: Then they wouldn't let you in, would they?

The WITNESS: They didn't let me in.

The COURT: Then you went home, did you?

The WITNESS: I stayed in Juarez.

The COURT: Then after that did you try to come into the country at San Diego?

The WITNESS: The second time I *cam* in through El Paso. When I come in the second time I came over the same bridge and
55 same place in El Paso.

The COURT: In Texas?

The WITNESS: Yes, sir.

The COURT: How did you get to this district?

Mr. GREAN: He then was apprehended after he came in. He attempted to come in through San Ysidro.

The WITNESS: Just a minute.

The COURT: Did you attempt to come in at San Ysidro?

The WITNESS: The second time I come to the United States—the first time I came legally and then I returned in 1947 or 1951. I come the second time to the United States by El Paso. I say I am an American citizen and cross the border. That is all I say. Then I come to work here in California and my wife come from Chihuahua to Tijuana. I went to Tijuana and got permission and bring her here with me to Los Angeles and I come to ask for a permit at the immigration station right here and they told me I have to take my wife back to Tijuana. I take her back for three months and they don't let me bring——

The COURT: Wouldn't let you come back?

The WITNESS: They told me over there they have to find out if I can come to the United States or not and then I come to Mexicali.

By Mr. GREAN:

Q. Now this question that was asked of you.

56 The COURT: Break that question up.

By Mr. GREAN:

"Q. At your hearing before the Board of Special Inquiry at El Paso, Texas in 1947 and 1950, did you admit that you remained in Mexico during the war for the purpose of evading or avoiding training or service in the army?

"A. No.

"Q. And were you excluded as an alien immigrant not in possession of an immigration visa or passport?

"A. Yes."

Q. Now that was the question asked of you?

A. Yes, they held me back.

Q. That much was the question asked of you and that is the answer that you gave. Now, you wait until I give you the answer and then you tell us whether that was your answer.

"A. Yes, I did."

Q. And then the question—your answer:

"A. And they did tell me that I needed to get a passport and immigration papers to enter the United States. The only thing was I did not do so but entered without.

Now was that question asked you?

A. Yes, they asked me that question but because I didn't have these documents—I did not admit having come in in the form that they suggested.

57 I call your attention to another question asked of you in that hearing and your answer and ask if it was asked of you and that was your answer:

"Q. Was fear of military service in time of war the only reason that you did not register for United States military training and service prior to 1946?

"A. The only true thing is and the only one I give now is my mother's fear of military service for me. I could have registered for it at Chihauhua, Mexico. I went there two or three times, the capitol of the state. It was because of the fear of my mother that I did not do so before 1946."

Was that question asked of you and was that your answer?

A. My mother never mentioned anything about fear. The only thing she mentioned was she didn't want me to go out of the house.

Q. All right. I will call your attention to the question on page 10 at the top:

"Q. Were you aware that you could have registered for the United States military service in Mexico prior to 1946 had you desired to do so?

"A. Yes, sir. I later thought of registering for it in Chihuahua, Mexico where I went a few times, but as my mother did not wish me to do so I did not do so."

58 Was that question asked of you and was that your answer?

A. No, I did not say that.

Mr. GREAN: At this time, if the court please, I wish to offer the transcripts of the hearings in evidence and subject to counsel's stipu-

lation that the court may consider the certified copy of said transcripts which were submitted in the case of this plaintiff versus Landon on habeas corpus which is in the court's file.

Mr. WOLPIN: I will so stipulate.

Mr. GREAN: And further I offer those portions of the record which were used to indicate the admissions against interest unless counsel desires to have the entire record considered by the court and in that case I will have no objection.

Mr. WOLPIN: I have no objection to the court considering the entire record.

Mr. GREAN: You didn't give the number of that case. I submit for the court's consideration the certified copies of the records of the administrative hearing of this plaintiff under the seal of the Immigration and Naturalization Service which is contained in the court's file of Case No. 14669, Castaneda vs. Landon.

The COURT: As I understand the stipulation it is stipulated that if the proper officers were called they would testify that he had answered the questions in the way that they are answered
59 in that transcript?

Mr. GREAN: Exactly.

Mr. WOLPIN: That is the stipulation.

Mr. GREAN: The only other way we can avoid their presence—I mean submit this evidence without such a stipulation would be to have the officers on the stand and ask if he asked that question and that was answered that way.

The CLERK: Do you want me to give this an exhihbit number?

Mr. GREAN: May I have that marked as an exhibit by reference?

The CLERK: Defendant's Exhibit A.

The COURT: Any further questions?

Mr. GREAN: No.

Mr. WOLPIN: I have one or two questions.

REDIRECT EXAMINATION

By Mr. WOLPIN:

Q. You were admitted to the United States on April 23rd, 1946, is that correct?

A. Yes.

Q. At the time of the admission you claimed to be an American citizen, is that right?

A. Yes.

Q. What evidence did you show the Immigration Service at that time that you were an American citizen?

A. A birth certificate and baptismal certificate.

60 Q. Did anything happen on April 24th, 1946, if you know?

A. Yes.

Q. That 24th day of April what happened?

A. I got up quite early in the morning. I went outside and some immigration inspector was driving by. He apparently saw me. I went back into the house and he came and picked me up and took me to the station, the immigration station. He questioned me at length to the effect if I had voted in Mexico. I told him no. He particularly wanted me to say that and I told him no and then they took me down there and took a statement and then they went me home—then I *cam* home.

Q. Did they permit you to remain in the United States at that time?

A. Yes.

Q. How long did you remain in the United States after the 24th of April 1946?

A. Until the immigration held me on the 1st of October.

Mr. WOLPIN: Nothing further.

Mr. GREAN: No further questions.

The COURT: That is all. Does the Government rest?

Mr. GREAN: The Government rests.

Mr. WOLPIN: The plaintiff rests.

The COURT: I am ready to hear any argument that you have.

ARGUMENT ON BEHALF OF DEFENDANT

Mr. GREAN: I call the court's attention to two matters,
61 the matter of admissibility I don't think is of importance. Now, I do wish to call the court's attention, however, to a matter that this court raised in another case very similar to this one.

The COURT: Myself?

Mr. GREAN: Yes.

The COURT: That is one of the questions that always bothers me.

Mr. GREAN: "Can this court hang a judgment on the flimsy support of uncorroborated admissions against interest". Because in that case all we had were uncorroborated admissions. We had no circumstances or facts from which the court could draw inferences. We merely had admissions such as these before the immigration authorities and at that time I quoted from Wigmore on Evidence.

The COURT: Did you sell me at that time?

Mr. GREAN: Yes, I did, your Honor. I read this sentence from Wigmore and you said that was all you wanted to hear.

The COURT: What volume?

Mr. GREAN: Volume No. 7.

The COURT: What page?

Mr. GREAN: Page 406, wherein it is stated:

> "There is no general rule that the admissions of a party in a civil case are insufficient, without corroborating evidence, as a foundation for a verdict."

62 And that was the statement upon which we rested at that time. We determined at that time that there are certain cases, like divorce actions, there are cases of confessions wherein certain corroboration is required by statute. This is not such a case.

Then the court raised a point today which I would like to merely call attention to because Wigmore says in Volume 4 at page 4 in Section 1048, he says that:

"The probative value of the use of admissions is two-fold."

Now the first purpose is accomplished by the court's statement that there has been sufficient impeachment of the testimony of the witness. He has been impreached. We can't believe him.

That is the first probative value that Wigmore makes. He says:

"In the first place, all admissions may furnish, as against the opponent, the same discrediting inference as that which may be made against the witness in consequence of a prior self-contradiction; the nature of this inference, both in its strength and in its weakness, has been already examined and need not be here reconsidered. In the next place, all admissions used against the opponent——"

63 Now, I stress the word "opponent" because this is distinguished from admissions of a witness. We are not trying to contradict a witness. We have the party in the case.

"All admissions used against the opponent, satisfy the hearsay rule, and, when once in, have such testimonial value as belongs to any testimonial assertion under the circumstances."

In other words, what I am saying to the court now is that the value of these admissions against interest once they are in have the two-fold purpose of to impeach the witness and second, to present evidence by way of testimonial value to the court. And that is what I think has been done in this case.

The COURT: Well, I think that you have cured most of my complaints by the stipulation here that if the witnesses were present they would testify in accordance with the questions and answers that were read.

Mr. GREAN: Wigmore just goes on to say:

"And the more notably they run counter to the natural bias or interest of the party when made, the more credible they become; this element adding to their probative value, but not being essential to their admissibility."

So if the court please, while it is always difficuelt for the Government in such a case to bring in affirmative evidence, it is only through the ex...mination of the plaintiff that we can de-

64 termine whether or not he has committed expatriation acts, and at a time when he has no reason to conceal the truth

he admits the expatriating acts and states sufficient corroboration to go with the physical factors of remaining in the country, entering for the very first time in 1946.

There you have a combination of factors, an admission of the intent, a physical remaining outside of the country, which I submit is sufficient to sustain the burden of the Government.

ARGUMENT ON BEHALF OF PLAINTIFF

Mr. WOLPIN: May it please the court, and counsel. If this were merely a case of a man who received a I-A classification, left the country for the purpose of evading or avoiding service in the military service, it would be a very simple matter.

However, in this case, your Honor, we have a man who was born of dual nationality. I don't know how familiar your Honor is with dual nationality.

The COURT: I think I am sufficiently familiar for this case.

Mr. WOLPIN: That man was a Mexican at birth by being born of Mexican parents. He was an American citizen by virtue of his birth in this country under the Fourteenth Amendment of the Constitution. He was born in one of the states of the United States.

65 We have the case of Perkins in 307 U. S. 325.

The COURT: I am familiar with that case.

Mr. WOLPIN: That case says that a person who was born a dual nationality does not have to decide—does not have to make an election of nationality until after they have attained their majority.

This man, your Honor, did not attain his majority until July 24th, 1945.

Furthermore, by the Nationality Act they were given two years after attaining their majority within which to come to the United States in order to retain their American citizenship.

I believe your Honor is familiar with that.

If your Honor please, there are two cases in the administrative decisions, immigration and nationality laws of the United States that I would like to call to your Honor's attention. They are on all fours with the case at bar. The first is the matter of G-M at page 860.

The COURT: What year?

Mr. WOLPIN: 1947.

The COURT: What page?

Mr. WOLPIN: 861. May I give you the facts of that case?

The COURT: Yes.

Mr. WOLPIN: The appellant was born in Kansas in 1925 and acquired citizenship under the Fourteenth Amendment to

66 the Constitution.

The Board of Special Inquiry found that he had ex-

patriated himself under Section 401-J of the Nationality Act as Amended.

Appellant resided in Mexico since 1931. He states he did not register for military service because he thought he would be called for military duty and wished to stay with his family in Mexico.

He stated that he remained in Mexico for the purpose of supporting his two dependent sisters, who are now accompanying him to the United States.

He states he does not know why he did not bring them to the United States until two years ago.

The appellant was ordered excluded and the Board of Immigration Appeals admitted him as an American citizen saying that his sole reason for remaining in Mexico was not to avoid service in the armed forces of the United States.

If your Honor please, when this Act was before Congress—I have the conversations that took place with reference to its purpose—with reference to the purpose of its passage and that is found in immigration proceedings at page 280.

The COURT: It will not be necessary to read that, counsel. I will do that myself.

Mr. WOLPIN: There is one more case I would like to call to the attention of the court and that is 2 Immigration and Naturalization Decisions at page 910. In my pretrial statement I
67 quoted from this decision.

"The appellant is 28 years of age. The appellant acquired United States citizenship by virtue of birth, November 19, 1918. Applied for admission of United States citizenship on June 8, 1947. June 9, 1947 a special board of inquiry concluded he had lost his American nationality under Section 401-J of the Nationality Act amended September 24, 1944 by remaining outside of the jurisdiction of the United States to evade or avoid military service in time of war and excluded him on the above stated ground.

"He appeals and the Board of Immigration Appeals admitted him as an American citizen saying——"

The COURT: You do not need to read that.

Mr. WOLPIN: The Board of Immigration Appeals admitted him as an American citizen saying that on this evidence—well, I might give you an admission that he made:

"Q. Then you voluntarily remained outside the United States to avoid training and service in the armed forces of United States, is that correct?

"A. Yes, sir."

The Board of Immigration Appeals says:

"On this evidence we think that appellant was not expatriated. Appellant remained in Mexico because he was liv-

ing in that country and because it was necessary for
68 for him to continue to support his family."

The legislative history shows Congress——

The COURT: You do not need to go into that, counsel.

Mr. WOLPIN: What Congress had in mind was those people who departed from the United States during the war expected to remain outside until the war was ended. But however where a person has resided abroad for a lengthy period of time there are considerations other than the desire to escape military service which explains the fact that he continued to reside abroad.

If your Honor please, this boy lived for 20 years in Mexico. I mean it wasn't as if he had received a notice from the draft board to report for military duty and ran across the border. I mean he was under his mother's jurisdiction until he became of age.

He had three or four sisters of school age. He went to school from the time he was six until the time he was 10 and now he comes before a board of special inquiry and with all of their knowledge—with their knowledge of the immigration laws and all the ways to trap him—I don't see—everything that he did say, whatever admissions he did make, the words were actually put into his mouth.

Your Honor, I submit in view of the fact that he was a dual nationality, that there was no duty on him to make an election of nationality until he attained his majority—and he had
69 within two years after obtaining his majority to return to the United States in order to retain his citizenship and I submit, your Honor, that when he came in on April 23, 1946, exhibitied his American birth certificate showing birth in the United States and a baptismal certificate that was his election of nationality. It was then and there that he chose to make an election and I think he should be considered an American citizen.

Your Honor, this man has spent more than six months at Terminal Island now rather than go back to Mexico.

That is all I have to say, your Honor.

STATEMENT OF THE COURT

The COURT: Gentlemen, I think in the first place you have to consider that this young man is far above the ordinary intelligence of many of his people. He is not what you call a peon by any means. He is a pretty bright young fellow.

But I must consider the fact that he tells me he didn't know a war was on. I just can't believe that. I don't believe his testimony is that respect. I think he has been fully impeached. I don't think his word here is anything but self-serving testimony. I just don't believe it.

He knew a war was on. He knew there was a responsibility on his part and he knew he was over the age where he could have en-

listed, come to the United States for that purpose. I think the law provided for 18 year old boys to enlist at that time.

70 I further believe that his testimony before the immigration officers was far more accurate and more near the truth than after he consulted counsel and found out what his legal rights were.

I can understand why he may have felt at that time that it was safer to stay in Mexico and not take chances of being killed or wounded in the war. He remained outside the United States for that purpose and it is my opinion—and I know these cases have been very troublesome. You understand what the court said this morning. They are troublesome to the court and to all the authorities, but when a person has had three hearings and each time has testified as to the reasons for remaining out of the United States —I think when a person who remains out of the United States during the time of war should explain why he didn't fulfill his obligation.

I don't believe him when he said he didn't know that there was a war going on or didn't fully appreciate his responsibilities.

I feel that the plaintiff failed to make a case here. I think that he has not established his citizenship. He has lost his citizenship by reason of remaining in Mexico and remaining there for the purpose of evading military service in the United States.

I wish someone would appeal one of these cases. We have

71 had a number of them. I would like to have an opinion from the Circuit Court, some definite line of cases which we could rely upon.

I had a similar case to this but that was a case where a boy was away in the depths of Mexico and I admitted him because I felt he didn't appreciate or have an opportunity to recognize his obligations. But in that respect it seems to me that this boy was standing pat on his dual citizenship to see whether it was safer to be a citizen of Mexico or the United States during its time of need of manpower. That was the time when he deserted the country and refused to come back.

When a boy of that kind comes in and tells me his mother wouldn't let him out of the house, he couldn't come because his mother wouldn't let him out of the house, I don't know how such foolish statements can be made. I appreciate he has been in Terminal Island for a long time but that doesn't change the picture before me.

I feel therefore, that the Government is entitled to a judgment of dismissal.

I don't know how you can ask, counsel, me to find for the plaintiff here in view of his admissions and statements before the immigration officer.

Mr. WOLPIN: I didn't ask your honor to disbelieve any of the statements. In fact I stipulated to the entry of them. I did
72 not see the record before I filed this action, your Honor, and of course I can only take my client's word for what went on.

The COURT: This plaintiff is an intelligent young man and he probably would have made a good soldier and made a good citizen, but he decided not to be a good soldier so therefore he can't be a good citizen.

Mr. WOLPIN: Thank you, your Honor.

The COURT: Do you wish findings?

Mr. WOLPIN: I will waive findings.

(Whereupon, at 2:45 o'clock p.m. the above-entitled proceeding was concluded.)

73 (File endorsement omitted.)

Reporter's Certificate to foregoing transcript omitted in printing.

74 Minute entry argument and submission—July 15, 1954 (omitted in printing).

75 In United States Court of Appeals for the Ninth Circuit

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—September 8, 1954

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

76 In United States Court of Appeals for the Ninth Circuit

No. 13,929

DANIEL CASTANEDA GONZALES, Appellant

vs.

H. R. LANDON, District Director of Immigration and Naturalization of District No. 16, and HERBERT BROWNELL, Attorney General of the United States, Appellees

Upon Appeal from the United States District Court for the Southern District of California, Central Division

OPINION—September 8, 1954

Before: STEPHENS, FEE and CHAMBERS, *Circuit Judges*
JAMES ALGER FEE, *Circuit Judge:*

This proceeding is for declaration of citizenship. Gonzales alleges he was born at Santa Rita, New Mexico, July 21, 1924. It is also alleged he is confined for deportation. The answers were denials of citizenship and, affirmatively, that plaintiff remained out of the United States in time of war for the purpose of evading military service and that there was no claim upon which relief could be granted.

It was stipulated at trial that plaintiff was born in the United States and, when less than two years of age, was taken to the Republic of Mexico. There are implications in the testimony that his parents were both aliens and citizens of Mexico, but the point was not developed. Plaintiff testified that from 1926 to 1946 he resided in Favela, Chihuahua, Mexico. His father died, and plaintiff testified he did not come to the United States because his
77 mother would not let him. He testified he registered for military service in Mexico in 1942. He also stated that he was admitted to the United States on April 23, 1946, upon his claim of United States citizenship by the presentation of a birth certificate and a baptismal certificate to the Immigration Service.

The statements of the plaintiff before a Board of Special Inquiry of the Immigration Service in 1947, 1950 and 1952 were introduced in evidence. There was a stipulation that, if the officers were called, they would verify his answers as shown in the transcript. Plaintiff swore that he did not make the answers and that he had not knowingly remained in Mexico in order to avoid military service.

The District Court determined that although plaintiff was a citizen by birth he had expatriated himself by remaining outside the jurisdiction of the United States in order to avoid training and service in the armed forces of this country in time of war.[1] Plaintiff claims the United States had the burden of proof to show Gonzales was no longer a citizen. The trial court followed the contention. We do not have to pass upon the validity thereof. The trial

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[1] "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: * * * (j) Departing from or remaining outside of the jurisdiction of the United States in time of war * * * for the purpose of evading or avoiding training and service in the land or naval forces of the United States." A t, Oct. 14, 1940, c. 876, Title I, subchap. IV, Sec. 401, 54 Stat. 1168, as amended Sept. 27, 1944, c. 418, Sec. 1, 58 Stat. 746, 8 U.S.C.A. Sec. 801(j).

judge decided the questions of fact. If the judgment had substantial evidence to support it, this Court should affirm.

Under our system, citizenship is a matter of voluntary choice. This country fought a war largely upon the issue that subjects of foreign potentates who voluntarily become American citizens had the right lawfully to expatriate themselves. This power is accorded to American citizens by birth or naturalization. The recent statute defines in general the acts whereby an American citizen may voluntarily expatriate himself.[2] This Court once held that a citizen by birth could be expatriated during minority by act of the
78 parents.[3] This holding went too far and was wrong.[4] But a voluntary act of a party which clearly indicates a desire for and is declared by law to result in expatriation is conclusive. The statute which lists these acts is constitutional.[5]

It is probable that Gonzales had citizenship in the United States and in the Republic of Mexico during his minority. His registration for military service in Mexico would seem to indicate a choice of citizenship in that country.

But the ground which the Court chose here was that Gonzales was expatriated by his voluntary act with intent of avoiding military service. The plaintiff swore to the contrary. The finding of the Court is overwhelmingly supported by statements of plaintiff himself before the officers in 1947 and 1950. The objection urged here is that such statements are hearsay and inadmissible except for purposes of impeachment. The plaintiff's testimony in the record is contrary to these statements. From the facts then in the record, that plaintiff, an American citizen, remained in Mexico while the United States was involved in a war in which it was his duty to offer military service and that he made no effort to come within the borders until it was apparent the need for his service had passed, the Court might have drawn the obvious inference that the absence from the country was voluntary and for the purpose of evading military duty. If the trial court found plaintiff not credible as a witness and disbelieved his testimony in court as to a contrary state of mind, the case of plaintiff would then fail.

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[2] Act, June 27, 1952, c. 477, Title III, c. 3, Sec. 349, 66 Stat. 267, 8 U.S.C.A. Sec. 1481, et seq.

[3] United States v. Reid, 9 Cir., 73 F. 2d 153, reversing In re Reid, D. Oregon, 6 F. Supp. 800.

[4] Perkins, Secretary of Labor v. Elg, 307 U.S. 325, 349.
MacKenzie v. Hare, 239 U.S. 299.

[5] This Court has said that it is bound by the statute unless it can be said that it is "clearly unconstitutional, a conclusion without rational foundation." Miranda v. Clark, 9 Cir., 180 F. 2d 257, 259.

But these extrajudicial statements of plaintiff were not hearsay. These were substantive evidence. The extrajudicial statements of a party to the action, civil or criminal, are binding upon him and substantive evidence against him.[6] There is an addi-
79 tional reason for the admission of these well-authenticated utterances of plaintiff, since they were statements against interest and thus have further guarantee of verity.[7] They were clearly admissible for all purposes. The only question which gave pause at the threshold was whether these were admitted only for the purpose of impeachment. An examination shows that the record of the hearings, including these statements of plaintiff, was admitted upon stipulation of counsel for plaintiff for all purposes.

The judgment of denial of a declaration of citizenship is affirmed.

[File endorsement omitted.]

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[6] "* * * all admissions, used against the opponent, satisfy the Hearsay rule, and, when once in, have such testimonial value as belongs to any testimonial assertion under the circumstances; and the more notably they run counter to the natural bias or interest of the party when made, the more credible they become; this element adding to their probative value, but not being essential to their admissibility." IV Wigmore on Evidence, Sec. 1048 (3rd Ed.). Harrison v. United States, 10 Cir., 42 F. 2d 736, 737.

[7] "The modern rule, as we see it, is that a statement (even though unsworn) is admissible as substantive evidence, if the fact asserted in the declaration is so far contrary to the declarant's pecuniary or proprietory interest, or so far subjects him to criminal or civil liability, or renders him an object of hatred, ridicule or social disapproval, that a reasonable man would not have made such a statement unless he believed it to be true." Schoeps v. Carmichael, 9 Cir., 177 F. 2d 391, 398, certiarari denied, 339 U.S. 914. IV Wigmore on Evidence Sec. 1455, et seq.

80 In United States Court of Appeals for the Ninth Circuit

No. 13,929

DANIEL CASTANEDA GONZALES, APPELLANT

vs.

H. R. LANDON, District Director of Immigration and Naturalization of District No. 16, and HERBERT BROWNELL, Attorney General of the United States, APPELLEES

JUDGMENT—Filed and entered September 8, 1954

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(File endorsement omitted.)

81 Clerk's Certificate to foregoing transcript omitted in printing.

82 SUPREME COURT OF THE UNITED STATES, October Term, 1954

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 5, 1955.

WM. O. DOUGLAS,
Associate Justice of the Supreme Court of the United States.

Dated this 7th day of December, 1954.

83 SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—May 31, 1955

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, and the case is transferred to the appellate docket as No. 831.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 355005 195